IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

INSOLVENCY PETITION NO.205 OF 2004

Re : Smt. Ramaben Keshavlal Shah. ...Debtor.
Ex-parte:
Jaywant Keshavlal Shah. ...Petg. Creditor.

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Mr.Kishore Jain i/b. G. R. Mehta for the Petitioning Creditor.
Mr.M. S. Bhandari i/b. Ms.Suman Jain for deceased Debtor.

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CORAM : DR.D.Y.CHANDRACHUD, J.

August 19, 2006.

P.C.

The Insolvency Petition is based on a decree passed by this Court in Summary Suit 4043 of 1990 on 22nd March 1991. The decretal dues are in the amount of Rs.32,38,677.90 along with further interest on the sum of Rs.12,14,199.46 at the rate of 12% per annum from 17th August 2004. On 12th October 2004 an Insolvency Notice was issued. The Notice was served on the debtor on 5th November 2004. The dispute was between members of the family and on 9th December 2004, the debtor addressed a letter stating that since there was an intervention by the members of the family, no steps should be taken. On 22nd December 2004, the Advocate for the Petitioning Creditor in a reply

recorded that no settlement was arrived at and hence the matter would be proceeded further. The present petition was filed on 29th December 2004. The debtor expired in the meantime on 1st June 2005.

Section 93 of the Presidency Towns Insolvency Act, 1909 provides that if a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he was alive. Section 108 of the Act provides that any creditor of a deceased debtor, whose debt would have been sufficient to support an insolvency petition against the debtor had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his death, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under the Act. Sub-section (2) of Section 108 lays down that upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the

deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

In the present case, it is rather unfortunate that the dispute was between members of the family closely related. The decree however stands. No reply has been filed by the legal representative of the deceased debtor. An affidavit has been filed on 22nd November 2005 setting out what, according to the Petitioning Creditor, forms part of the estate of the deceased debtor. The assets which form part of the estate of the deceased debtor will have to be investigated by the Official Assignee. Having regard to the provisions of law contained in Sections 93 and 108 of the Presidency Towns Insolvency Act, 1909, it would be appropriate for the Court, at the present stage, to issue a direction in these proceedings to the effect that the estate of the deceased debtor shall be administered in insolvency. There shall accordingly be an order in the aforesaid terms.

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